

**OCT 23 2000**

CLERK, SUPREME COURT  
BY \_\_\_\_\_

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE  
MATTHEW E. MCMILLAN  
CASE NO. 00-17

SC CASE NO. SC00-703

ANSWER TO SECOND AMENDED NOTICE OF FORMAL CHARGES COUNT II

The Honorable Matthew E. McMillan, by and through his undersigned counsel, hereby answers to the charges alleging a violation of Canon 1, Canon 2A and Canon 3B(1) and 3E of the Code of Judicial Conduct as follows:

COUNT II

LOHREY V. EASTMAN

10. Admitted that Judge McMillan entered an Order to Disqualify Judge in the Lohrey matter on February 9, 2000 recusing himself from further proceedings in that matter. Admitted that the next day Judge Owens as acting Chief Judge entered an Order Re-Assigning the Case thereby reassigning the matter to the Honorable K. Douglas Henderson.

11. Judge McMillan entered a default against the defendants on February 10, 2000 without knowledge of the Order Re-Assigning Case signed by Judge Owens. Judge McMillan also entered a Final Judgment for Possession in favor of plaintiff on February 10, 2000. Denied that Judge McMillan met ex parte with the plaintiff without giving defendants notice or an opportunity to appear and be heard.

12. Denied that Judge McMillan knew or should have known

that he had no right, jurisdiction or authority to act after the disqualification order was entered.

13. Denied.

14. Admitted.


15. Admitted that Judge McMillan entered an Order Vacating the Order to Disqualify Judge on February 15, 2000 which had previously been entered on February 9, 2000. Denied that Judge McMillan knew or should have known that he had no authority to do so. Admitted that a disqualification order once entered cannot be vacated or set aside by the previously disqualified judge as a matter of law. Admitted that Judge McMillan entered a Final Judgment in favor of the plaintiff, Carl Lohrey, on February 15, 2000.

16. Denied. Judge McMillan's act of vacating the Order to Disqualify Judge is, at worst, a simple legal error which does not constitute a violation of the referenced Canons of the Code of Judicial Conduct. Judge McMillan respectfully submits similar conduct by other jurists has resulted in reversals by appellate courts in State v. Schack, 617 So. 2d 832 (Fla. 4<sup>th</sup> DCA 1993); Rogers v. State, 341 So. 2d 196 (Fla. 4<sup>th</sup> DCA 1976); Gilmer v. Shell Oil Company, 324 So. 2d 171 (Fla. 2<sup>d</sup> DCA 1975); Vaughn v. State, 226 So. 2d 443 (Fla. 3<sup>d</sup> DCA 1969). None of the trial judges overturned in the cases referenced above were sanctioned by the Supreme Court of Florida for adjudicating matters after disqualification. In fact, in the Vaughn case, Judge Jack Turner transferred the matter back to the trial judge, Judge Steadman,

who had previously been disqualified. Neither Judge Turner nor Judge Steadman was found to have violated the Code of Judicial Conduct for failing to recognize the illegality of the reassignment and subsequent adjudication by Judge Steadman. None of the judges in any of the cases referenced above were criticized or chastised by the appellate court for his or her actions.

17. Denied.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20<sup>th</sup> day of October, 2000, the original of the foregoing Answer to Second Amended Notice of Formal Charges Count II has been furnished by U.S. Mail to:

Honorable Thomas D. Hall  
Clerk  
Supreme Court of Florida  
500 Duval Street  
Tallahassee, Florida 32399

with copies to:

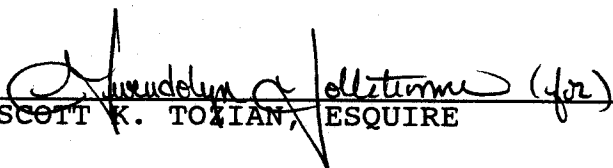
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